

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 4019 OF 2005

Salman Salim Khan ...Applicant

V/s.

The State of Maharashtra ...Respondent

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Mr. S.V. Marwadi, Advocate the applicant.

Mr. V.B. Konde Deshmukh, A.P.P. for the State.

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CORAM: SMT. V.K. TAHILRAMANI, J.

**DATE OF RESERVING
THE ORDER : 13.07.2005**

**DATE OF PRONOUNCING
THE ORDER : 19.09.2005**

P.C.:-

1. Heard the learned advocate for the applicant i.e. original accused and the learned A.P.P. for the State.

2. The applicant is facing prosecution in C.C. No. 490/PS/2005. The said case is mainly under Section 304-A, 279, 427 of I.P.C. r.w. Section 130(1), 134(a) and (b) and 187 of Motor Vehicles Act.

3. The applicant has prayed that the trial relating to the said case be held in camera. The case of the applicant is that the members of media are after him

and they have given wide publicity to the incident. If the reporters report the comments made in the Court, in the media, it will cause damage to the defence raised on behalf of the accused. It is further submitted that the media and reporters would give wide publicity to every gesture of the witnesses while giving evidence and it will create unnecessary pressure on the witness. It is submitted that in such case the witness will not be able to depose before the Court freely and fearlessly. In such case, the applicant would not get a fair trial. Hence, it is prayed that the trial relating to the said case be held in camera.

4. Mr. Marwadi, the learned advocate for the applicant has fairly submitted that he is restricting the prayer of holding trial in camera only in respect of examination of the complainant Mr. Ravindra Patil. He has no objection if the other witnesses are examined in the open court.

5. An application had been preferred by the applicant before the learned Magistrate for holding trial in camera. The learned Magistrate by order dated 17.6.2005 rejected the said application. The ground on which the learned magistrate rejected the application is that the present case is not relating to sexual offence and the case is mainly under Section 304-A, 279, 427 of I.P.C. r.w. Section

130(1), 134(a) and (b) and 187 of Motor Vehicles Act. The learned Magistrate has observed that he did not find any substance in the ground mentioned by the applicant for holding his trial in camera, hence, application came to be rejected.

6. Mr. Marwadi has placed reliance on the decision of the Supreme Court in the case of **Naresh Shridhar Mirajkar Vs. State of Maharashtra and Anr.** reported in **AIR 1967 SC 1**. He has placed reliance on the observations in the said decision wherein it is held that the High Court has jurisdiction to hold trial in camera or part of trial in camera. It is true that as per usual procedure the trial has to be in the open Court but in view of the proviso to Section 327(1) of Cr.P.C., the Court can regulate its procedure in accordance with the circumstances of the case. Thus, in the present case, it is to be seen whether the circumstances of the case are such that it would require the witness to be examined in camera and if the trial is not held in camera, can it be said that the accused would not get a fair trial.

7. In our country right of accused to have a public trial has been expressly provided in the Code. The main part of sub-Section (1) of Section 327 Cr.P.C. embodies the principle of public trial. It significantly uses the words "open court". It means that all justice shall be done openly and the courts

shall be open to public. It means that the accused is entitled to a public trial and the public may claim access to the trial. There should not even be an impression that it is a secret trial. The judicial process should be thrown open to the public at every stage. The public must have reasonable access to the place of trial. The Presiding Judge must have full control of the Court. The accused must have all facilities to have a fair trial and all safeguards to avoid prejudice. However, I may hasten to add that public trial does not mean that every person shall be allowed to attend the Court. The court may restrict the public access for valid reasons depending upon the particular case and situation. The Presiding Officer may, therefore, remove any person from the court premises if his conduct is undesirable. These and other like restrictions will not impair the right of the accused or that of the public. They are essential to ensure fairness of the proceedings and safety to all concerned.

8. In the present case, it is to be noted that the applicant has been granted exemption from personal appearance during the trial. In such case, it is not as if the applicant is required to remain present before the trial Court which may lead to a large crowd gathering there, which may cause security problem in respect of the applicant or any

obstruction in the working of the Court.

9. Mr. Marwadi, the learned advocate for the applicant has expressed an apprehension that the complainant Mr. Ravindra Patil will be under unnecessary pressure if he is examined in the open Court and due to the said pressure, he will not be able to depose before the Court freely and fearlessly. It is to be noted that this witness is working in the police force as such it cannot be said that this witness would be under any fear or pressure when he deposes before the Court. Thus, I find the apprehension expressed to be unfounded.

10. The applicant is aware of the averments in the complaint of Ravindra Patil. If at all, on account of pressure, this witness deviates from his original statement, the contradictions and omissions can be brought on record during the cross examination and the evidence of this witness where he has deviated can be demolished in the cross examination. In such case, even if this witness deviates from his original statement on account of pressure as apprehended by the learned advocate for the applicant, the said deviation can be taken care of during the cross examination. In such case it cannot be said that the applicant would not get a fair trial if this witness is not examined in camera. In this view of the matter, I do not find any merit in this application,

hence, application is rejected.

11. It is made clear that during the course of trial, if the trial Court is of the opinion that for any reason the holding of an open trial would not be conducive then in such case it would be open to the trial Court to hold the trial in camera.

12. At this stage, Mr. Marwadi, the learned advocate for the applicant states that he wishes to challenge this order before the Supreme Court, hence, he prays that stay may be granted for a period of five weeks from today, in respect of examination of P.W.1 Ravindra Patil. Learned A.P.P. Mr. Konde Deshmukh vehemently opposes the prayer for stay. However, I am inclined to grant stay as prayed for, for a period of five weeks from today. Hence, stay is granted in respect of examination P.W.1 Ravindra patil for a period of five weeks.

13. Application is disposed of.
